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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,413	02/06/2004	Christiaan H.P. Dirks	121640-40308234	2078
909	7590	07/14/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			REIMERS, ANNETTE R	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			3732	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/772,413

Applicant(s)

DIRKS ET AL.

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/28/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Priority*

Applicant is reminded that in order for a patent issuing on the instant application to obtain the benefit of priority based on priority papers filed in parent Application No. 03075368.5 under 35 U.S.C. 119(a)-(d) or (f), a claim for such foreign priority must be timely made in this application. To satisfy the requirement of 37 CFR 1.55(a)(2) for a certified copy of the foreign application, applicant may simply identify the application containing the certified copy.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which the applicant regards as the invention.

In claim 1, the phrase "in particular", in lines 1, 3 and 5, renders the claim indefinite because it is unclear what the limitations, if any, such places on the claimed invention. See MPEP § 2173.05(d).

In claim 2, line 1, "the polymer fiber" lacks proper antecedent basis.

In claim 6, lines 1-2, "the torsion force" lacks proper antecedent basis.

In claim 7, line 1, "the torsion force" lacks proper antecedent basis.

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In claim 8, the phrase "preferably", in line 2, renders the claim indefinite because it is unclear what the limitations, if any, such places on the claimed invention. See MPEP § 2173.05(d).

Also, in claim 8, line 1, "the fiber cable" lacks proper antecedent basis.

In claim 9, line 1, "the torsion force" lacks proper antecedent basis.

In claim 11, line 2, "fiber bundle" lacks proper antecedent basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6 and 8-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Barker Jr. et al. (U.S. Patent Number 5,540,703).

Barker Jr. et al. disclose a method for tying together objects comprising the steps of laying a surgical cable, which is a closed loop high performance, high molecular weight polyethylene fiber of finite length (see column 3, lines 32-35), having two end parts, 28 and 30, around at least part of the objects to be tied together and exerting a torsion force on the end parts bringing the cable under a tension required for tying the objects (see figures 7-9). The cable is twisted having an eye at one of the end parts and the torsion force is exerted on the cable through the eye (see figures 23-29). Furthermore, the cable is a loop of fibers that has been closed by a splice, which is folded around the bone parts forming two returning ends in the cable as end parts (see

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figures 23-39). Moreover, the torsion force is exerted on the cable through the returning ends and on a twisting device running through the return ends (see figures 23-39). The two end parts are connected with a knot and a torsion force is exerted on the cable below the knot (see figures 19-22).

Claims 1, 4-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by McLeod et al. (U.S. Patent Number 5,800,543).

McLeod et al. disclose a method for tying together objects comprising the steps of laying a surgical cable, having two end parts around at least part of the objects to be tied together and exerting a torsion force on the end parts bringing the cable under a tension required for tying the objects (see figure 10). The cable is twisted having an eye at both ends and the torsion force is exerted on a twisting device, 25 or 33, running through the eyes (see figures 3, 9 and 10).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR



KEVIN SHAVER  
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